

**IN THE MATTER BEFORE THE BOARD
OF THE COMPETITION AND CONSUMER
PROTECTION COMMISSION**

Case No. MERG/17/10/2022/00103

BETWEEN

**SQUARE DIAMOND PARTNERS AND REAL APPLICANTS
ESTATE INVESTMENT ZAMBIA PLC**

AND

**COMPETITION AND CONSUMER RESPONDENT
PROTECTION COMMISSION**

BEFORE:

Commissioner Angella Kafunda	- Chairperson
Commissioner Stanford Mtamira	- Member
Commissioner Sikambala M. Musune	- Member
Commissioner Emmanuel M. Mwanakatwe	- Member
Commissioner Derrick Sikombe	- Member

DECISION

Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

Introduction

It was submitted that:

1. The Competition and Consumer Protection Commission (“the Commission”) on 13th October 2022, received an application from Musa Dudhia and Company for the proposed merger involving Real Estate Investment Zambia Plc (“REIZ” or the “Seller”) and Square Diamond Partners (“SDP” or the “Acquirer”). The transaction was fully notified on 13th September 2023.
2. SDP is a partnership duly registered under the Laws of Zambia.
3. REIZ is a publicly listed company on the Lusaka Stock Exchange (LuSE), incorporated under laws of Zambia.

Legal Provisions and Assessment Tests

Legal Provisions

It was submitted that:

4. Section 8 of the Act provides that:

“Any category of agreement, decision or concerted practice which has its object or effect, the prevention, restriction or distortion of competition at an appreciable extent in Zambia is anti-competitive and prohibited”.

5. Section 25 (1) of the Act states that a merger is subject to the provisions of this Part if it is reviewable by the Commission. Section 25(2) states that the Commission shall review a merger if-

(a) *The merger is subject to prior authorisation in accordance with Section twenty-six;*

or

(b) *The Commission elects or reviews the merger in accordance with Section twenty-seven*

6. Section 26(1) states that; *“Parties to a merger transaction that meet the prescribed thresholds under subsection (5) shall apply to the Commission for authorisation of the proposed merger in the prescribed manner and form”.*

Assessment Tests

It was submitted that:

7. In the investigation and assessment of potential and/or likely violations of the competition provisions of the Act, the Commission takes a multiple assessment approach, i.e., carries out a number of tests to ascertain whether the alleged violations have or are likely to result in any negative effects on the market, to the consumer, fair trade or the economy in general.

(i) Substantial Lessening of Competition or "Effect" Test - Section 30(1)

8. The Commission shall, in considering a proposed merger, assess whether the merger is likely to prevent or substantially lessen competition and take into account the likely and actual factors that affect competition in a defined market in Zambia.

(ii) Dominance Test - Section 30(2)(h)

9. Whether the transaction, through abuse or acquisition of a dominant position of market power, would or is likely to limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general.

(iii) Public Interest Test - Section 31

10. The Commission may authorise any act which is not prohibited by this Act, that is, an act which is not necessarily illegal unless abused if that act is considered by the Commission as being consistent with the objectives of the Act. In consideration of such matters, the Commission is required to apply public benefit tests. The Commission generally may, in considering a proposed merger, take into account any factor which bears upon the public interest in the proposed merger, including –

- a) the extent to which the proposed merger is likely to result in a benefit to the public which would outweigh any detriment attributable to a substantial lessening of competition;*
- b) the extent to which the proposed merger would, or is likely to, promote technical or economic progress and the transfer of skills, or otherwise improve the production or distribution of goods or the provision of services in Zambia*
- c) the saving of a failing firm;*
- d) the extent to which the proposed merger shall maintain or promote exports from Zambia or employment in Zambia;*

- e) the extent to which the proposed merger may enhance the competitiveness, or advance or protect the interests, of micro and small business enterprises in Zambia;
- f) the extent to which the proposed merger may affect the ability of national industries to compete in international markets;
- g) socio-economic factors as may be appropriate; and
- h) any other factor that bears upon the public interest.

Investigations conducted

It was submitted that:

11. The report was based on information that was submitted by the parties in the CCPC Form 1 of the Statutory Instrument No. 97 of 2011, literature reading obtained using reports submitted by the parties, desktop research and other information in possession of the Commission in the market. In addition, the Commission wrote to third parties in accordance with Section 29 of the Act requesting for their comments regarding the proposed transaction.

The Parties

Square Diamond Partners (“SDP” or the “Acquirer”)¹

It was submitted that:

12. SDP is a partnership duly registered under the laws of Zambia. SDP is a new entity set up in August 2022 and will be engaged in the real estate business. The parties submitted that SDP was incorporated for the purpose of this transaction.

Real Estate Investments Zambia Plc (“REIZ” or the “Target”)²

It was submitted that:

13. REIZ is a publicly listed company on the Lusaka Stock Exchange (LuSE), incorporated under Laws of Zambia. REIZ is a property developer and is a leading real estate investment, development and management company in Zambia and has properties localized in Lusaka.

¹ Submissions by the parties as part of the filing

² Submissions by the parties as part of the filing.

Findings

Competition Analysis

Consideration of the Relevant Market

It was submitted by the Technical Committee (TC) of the Board of Commissioners that:

14. The relevant market was found to be the provision of lettable space at Arcades shopping Centre and surrounding areas within a 10kms radius.

Consideration of Substantial Lessening of Competition or "Effect" Test

Market Concentration

It was submitted by the TC that:

15. The CR3 for this market could not be calculated due to unavailability of statistics. The Commission however noted that the market was fragmented with several players such as Aflife Properties, Times Properties, Growthpoint Investec Africa Properties and National Pension Scheme Authority (NAPSA).

Barriers to Entry

It was submitted by the TC that:

16. The main barrier to entry to the defined relevant market was found to be finance and equity as it was very hard to obtain realistic finance at workable interest rates. It was further found that enterprises that wished to enter or expand within this market required investment into land. It was also found that statutory constraints burdening real estate developments included monetary lending policies which forced property developers to seek financing opportunities internationally in general international accepted USD currency, which in turn forced the charging of rentals in USD to consumers and delays in acquiring approvals from different regulatory authorities.

Import Competition

It was submitted by the TC that:

17. The Commission found that rental space was an immovable asset which could not be imported or moved. As such there was no import competition in the relevant market as these services could not be imported.

Countervailing Power

It was submitted by the TC that:

18. Customers in this market had the ability to negotiate prices of rental space as this was found to be a highly competitive market. It was further found that due to the mentioned competitiveness and oversupply in the commercial property market, retailers had a wide choice for renting similar space to sell their goods. The parties submitted that tenants that rented space at Arcades Mall did have some countervailing power.

Removal of a vigorous competitor

It was submitted by the TC that:

19. The transaction was not likely to result in the removal of a vigorous competitor in Zambia. This was because the acquirer was a new entrant in the market who was acquiring a small portion of the target's business. However, the target would remain operational in the same line of business post transaction.

Consideration of Dominance

It was submitted by the TC that:

20. The Commission was unable to determine the market shares in this market due to unavailability of market statistics but noted that the transaction was unlikely to result in the abuse of dominant position due to the fragmented nature of the market with alternative suppliers. The proposed transaction was not likely to result in the creation of a dominant player in the identified relevant market.

Public Interest consideration

It was submitted by the TC that:

21. There were no public interest concerns arising from this transaction. It was found that the transaction presented an investment opportunity to rescue the Target entity from going into receivership that would ultimately be beneficial to employees and the public in general. Additionally, stakeholders consulted such as Pensions and Insurance Authority submitted that the transaction would have the positive effect on the pensions industry and that the transaction provided an opportunity for REIZ to raise capital and provide the company with liquidity which would minimize the risk of outright default on the bond.

Board of Commissioners (the Board) Deliberations

Relevant market

22. The Board deliberated that the relevant market was the provision of lettable space at Arcades shopping Centre and surrounding areas within a 10kms radius.

Substantial Lessening of Competition

23. The Board deliberated that the proposed transaction would not lead to the substantial lessening of competition in the relevant market identified because the transaction did not involve the removal of a vigorous competitor nor the creation of a dominant player. Further the proposed transaction did not change the market structure.

Abuse of Dominance

24. The Board deliberated that the proposed transaction was not likely to result in the creation of a dominant player in the identified relevant markets and as such, abuse was unlikely.


Public Interest Consideration

25. The Board deliberated that the transaction had no public interest concerns arising from this transaction. It was deliberated that the transaction presented an investment opportunity to rescue the Target entity from going into receivership that would ultimately be beneficial to employees and the public in general.

Board Decision

26. Given the foregoing analysis and conclusions, the Board decided that the transaction would not lead to substantial lessening of competition or abuse of dominance in the relevant market. Further the Board noted that the transaction was unlikely to raise any adverse public interest concerns. The Board of Commissioners hereby grants the parties **Unconditional Final Authorisation**. The authorisation of this transaction does not preclude the parties from obtaining any other relevant regulatory approvals pursuant to section 36 of the Act.

Dated 19th October 2023


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Chairperson

Competition and Consumer Protection Commission